

## When is an employee not an "employee" for PERSI purposes?

We frequently come across:

- Employees who should be paying into PERSI but are not, and
- Employees who should **not** be paying into PERSI but are.

It can be confusing sometimes to differentiate when an employee is or is not an "employee" for PERSI purposes. The following are guidelines for establishing PERSI eligibility for situations where an individual's compensation is in whole or in part from a different funding source.

### Source of funds not relevant

PERSI employers occasionally pay employee salary from sources other than the employer's normal funding.

Some individuals receive salary from federal funds or grants and from non-PERSI agencies such as an ambulance district, a golf association, or a contract for food services.

The source of funds used to compensate the individual for the services is irrelevant. PERSI does not look at the source of the funds. PERSI looks at the employer/employee relationship. For example: If a county is simply performing a payroll type function for an ambulance district, it may be that the people are not actually

county employees. If the county maintains separate books with a separate bank account and issues a W-2 with the employer shown as the ambulance district, the employer was the ambulance district.

However, if the funds are commingled and there is no separate accounting for the funds and the W-2 shows the employer to be the county, then they are county employees. An employee for whom the employer is reimbursed by another source (such as grant money) who is paid through payroll, issued a W-2 at the end of the year, and otherwise meets eligibility criteria should contribute to PERSI.

### Hours Worked

The individual must normally perform services of some type for a PERSI employer 20 hours or more per week or be a teacher working half contract or more.

Elected or appointed officials do not have an hourly requirement, but a service must be performed.

In determining the amount of hours worked for the employer, only those services for which the paycheck was issued will be considered. Paid leaves of absence are considered as services performed.

### Does the employee receive a 1099 or W-2?

The individual must receive pay for those services and/or the pay must be reported for income tax purposes.

#### 1099

When an employer is paying a person that does not have federal tax, state tax, or FICA (Social Security) withheld and at the end of the year is being reported on a 1099 for tax purposes this person is **not** an "employee" and should not be contributing to PERSI.

#### W-2

An employee (including elected/appointed) who receives a W-2 from the employer for tax purposes **is** considered an "employee" and should be contributing to PERSI, if they otherwise meet eligibility criteria.

### Waiving Compensation

If the individual, such as a board member, waives compensation and it is not reported for income tax purposes, contributions are not required. This does not necessarily mean that there would not be tax consequences on an IRA and, if this question arises, the individual

## PERSI "employee" continued from front

should seek tax advice.

### Salary

Salary on which contributions are to be made is outlined in Idaho Code Section 59-1302(31) and consists, in general terms, of the amount reported for income tax purposes by the employer with whom eligibility is established (or by any other PERSI employer where the individual also has salary and has established eligibility). Individuals excluded from employee status under Section 59-1302(14)(B) would not meet the eligibility requirements.

See "Eligibility Inclusions," "Eligibility Exclusions" and "Salary Definition" on this page.

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## Eligibility inclusions

Idaho Code Sec. 59-1302(14)(A)

### "Employee" means:

- \* Any person who normally works twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered for such employer;
- \* Elected officials or appointed officials of an employer who receive a salary;
- \* A person who is separated from service with less than five consecutive months of employment and who is reemployed by the same employer within thirty days.

## Eligibility exclusions

Idaho Code Sec. 59-1302(14)(B)

### Employee does NOT include:

- \* A person rendering service to an employer as an independent business, trade or profession;
- \* A person whose employment does not total five consecutive months;
- \* A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person;
- \* An inmate of a state institution, whether or not receiving pay;
- \* A student enrolled in an undergraduate, graduate, or professional-technical program at and employed by a state college, university, community college or professional-technical center when such employment is predicated on student status;
- \* A person making contributions to the U.S. civil service commission under the U. S. Civil Service System Retirement Act except that a person who receives separate pay for work performed for an employer and the U.S. government may elect to be a member of PERSI;
- \* A person in a position that does not exceed eight consecutive months in a calendar year with a city or county when the city or county has certified, in writing that the position is: seasonal or casual; and affected by weather **and** growing season, including parks and golf course positions.

## Salary Definition

Idaho Code Sec. 59-1302(31)

### Salary means:

- \* The total salary or wages paid to a person who meets the definition of employee by an employer for services performed and reported by the employer for income tax purposes, including the cash value of all pay in any form other than cash.
- \* The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is an alternative remuneration.
- \* Salary in excess of compensation limitations in section 401(a)(17) IRS Code shall be disregarded for any person who becomes a member of PERSI on or after July 1, 1996. PERSI had no limits on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(a)(17) IRS Code shall not apply for an "eligible employee"—an individual who was a member of PERSI before July 1, 1996.

### Salary does NOT include:

- \* Contributions by employers to employee medical savings accounts, as defined in Idaho Code Section 63-3022K.
- \* Lump sum payments inconsistent with usual payment patterns made to the employee only upon termination from service including, but not limited to, vacation or sick leave payoffs, early retirement incentive payments, bonuses, and lump sum contract payouts.